UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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January 28, 2004

Marilyn A. Durante,
Debtor *pro se*
840 North Spruce Street, Lot 88
Rapid City, South Dakota 57701

Brian L. Utzman, Esq.
Counsel for Advantage Title Loan, Inc.
Post Office Box 9596
Rapid City, South Dakota 57709

Subject: *In re Marilyn A. Durante*,
Chapter 7; Bankr. No. 01-50181

Dear Ms. Durante and Mr. Utzman:

The matter before the Court is Debtor's Motion to Reopen Case. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c). As set forth below, Debtor's Motion will be denied.

SUMMARY. Marilyn A. Durante ("Debtor") filed a Chapter 7 petition on April 4, 2001. In her schedules, Debtor listed Advantage Title Loans, Inc., ("Advantage") as holding a "Title" loan on her 1997 Champion Forest Park mobile home. Debtor also filed a statement that she intended to retain her mobile home and that she was declaring the mobile home exempt under S.D.C.L. § 43-45-3.

On October 25, 2001, Debtor filed a Motion to Avoid Lien Pursuant to 11 U.S.C. § 522(f). Therein, she sought an order by the Court that would avoid Advantage's lien on her mobile home because it impaired her claimed homestead exemption in the mobile home. Advantage timely objected. By letter decision and order entered November 19, 2001, Debtor's motion to avoid Advantage's lien on her mobile home was denied because Advantage held a nonpossessory, nonpurchase-money security interest in Debtor's mobile home and Debtor's mobile home was not the type

of property on which a nonpossessory, nonpurchase-money security interest could be avoided under 11 U.S.C. § 522(f)(1)(B). No timely appeal from that order was ever filed.

The case trustee did not find any non exempt assets to liquidate to pay creditors. The case was closed on February 27, 2003. No reaffirmation agreements were ever filed.

On January 26, 2004, Debtor filed a motion to reopen her Chapter 7 case. She advised the Court that Advantage had now sold her mobile home and that Advantage's forcible entry and detainer action against her was set for hearing in state court on January 30, 2004. Debtor alleged that Advantage's sale of her mobile home was illegal and done without sufficient notice and that it contravened her homestead exemption. She therefore asked the Bankruptcy Court to reopen her case and enter an order enjoining the pending state court action.

Debtor also complained that she should have been given a hearing on her earlier motion to avoid Advantage's lien and that she should have been given notice of that hearing. Third, Debtor stated that the interest on her student loan that was made known to her after her case closed was exorbitant and that she was unable to pay her student loans and accumulated interest due to hardship. Finally, Debtor asked that any fee for reopening her case be waived. The motion was taken under advisement.

DISCUSSION. Debtor has asked that her case be reopened so that this Court can address two matters, the foreclosure on her mobile home by Advantage and her inability to repay her student loans. As to Advantage's state court action that resulted in the sale of her home and also resulted in the pending forcible entry and detainer action, this Court -- the Bankruptcy Court -- does not have jurisdiction. Since Advantage's lien on Debtor's mobile home was not voided by this Court, it remained in effect. Once Debtor's case was closed, Advantage was free to use whatever nonbankruptcy law remedies it had to protect and enforce its lien interest in that collateral. The Bankruptcy Court no longer had jurisdiction over the mobile home. Moreover, the Court would not obtain jurisdiction over the mobile home if the case were reopened. The mobile home is no longer property of the bankruptcy estate by virtue of Debtor's homestead exemption, 11 U.S.C. § 522(b), and the "deemed abandoned" provision of 11 U.S.C. § 554(c). In fact, even if the case were reopened, the automatic stay would not go back into effect because generally only the filing of a petition

invokes the automatic stay under 11 U.S.C. § 362(a). *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 914 (B.A.P. 9th Cir. 1999); *Burke v. United States (In re Burke)*, 198 B.R. 412, 416 (Bankr. S.D. Ga. 1996); *In re Trevino*, 78 B.R. 29, 36-38(Bankr. M.D. Pa. 1987); *see In re Hakim*, 244 B.R. 820 (Bankr. N.D. Cal. 1999)(discussion, by chapter, of when stay is reinstated).

If Advantage failed to follow appropriate state law in the foreclosure action, Debtor must bring those issues to the state court to resolve. The Bankruptcy Court does not have jurisdiction to second guess or redo what the state court has already done under its valid jurisdiction. *Ferren v. Searcy Winnelson Co. (In re Ferren)*, 203 F.3d 559, 560 (8th Cir. 2000)(under *Rooker-Feldman* doctrine, federal Bankruptcy Court does not have jurisdiction to review or void state court decision); *Car Color & Supply, Inc. v. Raffel (In re Raffel)*, 283 B.R. 746, 748-49 (B.A.P. 8th Cir. 2002)(history and application of *Rooker-Feldman* doctrine). Accordingly, Debtor's motion to reopen the case so that the state court actions can be enjoined or otherwise altered is denied.

There is one important caveat. Debtor did not enter into any enforceable reaffirmation agreements with Advantage.[1] Accordingly, any personal liability she had on any notes with Advantage was discharged in her Chapter 7 case. Advantage, therefore, may look only to its collateral to recover on its claims. It may not collect any deficiency (the balance still due on the note after the collateral is sold) from Debtor. If Advantage does try to collect any deficiency claim from Debtor, this Court -- the Bankruptcy Court -- would have jurisdiction to determine whether Advantage has violated the post-discharge injunction established by 11 U.S.C. § 524(a)(2).

If Debtor felt the Bankruptcy Court ruled erroneously in November 2001 on her motion to avoid Advantage's nonpossessory, nonpurchase-money security interest or that an evidentiary hearing on that motion was necessary because material facts were

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[1] Sections 524(c) and (d) set forth several requirements for an enforceable reaffirmation agreement between a debtor and a creditor. Among others, the agreement must be made before the debtor's discharge is entered and the agreement must be filed with the Bankruptcy Court. Even if Debtor signed an agreement with Advantage before her discharge was entered, it is not enforceable because it was never filed with the Court.

in dispute,[2] she should have raised those matters promptly with the Bankruptcy Court or she should have appealed the Bankruptcy Court's decision. She did neither. Therefore, her request that this Court take another look at that matter is very untimely, and it will be denied.

If Debtor wants to obtain a hardship discharge of her student loan, she may commence an adversary proceeding under 11 U.S.C. § 523(a)(8).[3] Her main bankruptcy case does not need to be reopened for her to do so. Local Bankr. R. 5010-1(b)(2).

An order denying Debtor's January 26, 2004, Motion to Reopen Case will be entered.

Sincerely,

/s/ Irvin N. Hoyt

Irvin N. Hoyt
Bankruptcy Judge

INH:sh

cc: case file (docket original and serve parties in interest)

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[2] Regarding Debtor's motion to avoid Advantage's lien, Debtor admitted that Advantage held a nonpossessory, nonpurchase-money security interest and Advantage admitted that Debtor had declared the mobile home exempt as her homestead. Thus, no material facts were disputed. Only a legal question remained, which the Court ruled upon in its November 19, 2001, letter decision.

[3] For decisions by this Court on the application of 11 U.S.C. § 523(a)(8), see ***Dean v. Tennessee Student Assistance Corp. (In re Michael E. and Anna J. Dean)***, Adv. No. 93-5017, Bankr. No. 93-50257, slip op. (Bankr. D.S.D. July 28, 1994); ***Volkers v. Indiana Wesleyan University (In re Volkers)***, Adv. No. 03-5006; Bankr. No. 03-50038, slip op. (Bankr. D.S.D. Oct. 10, 2003). These decisions are available on the Court's web site at www.sdb.uscourts.gov.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Western Division

In re:	)	Bankr. No. 01-50181
	)	Chapter 7
MARILYN ANNE DURANTE	)	
Soc. Sec. No. XXX-XX-6230	)	ORDER DENYING DEBTOR'S
	)	MOTION TO REOPEN CASE
Debtor.	)	

In recognition of and compliance with the letter decision entered this day,

IT IS HEREBY ORDERED that Debtor's January 26, 2004, Motion to Reopen Case is DENIED.

So ordered this 28th day of January, 2004.

BY THE COURT:

/s/ Irvin N. Hoyt
Irvin N. Hoyt
Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: _____
Deputy Clerk
(SEAL)